

7 Violence restraining orders and their role in preventing and reducing family and domestic violence

7.1 Legislative basis for violence restraining orders

The *Restraining Orders Act*³³⁵ defines a VRO as an order that is made under the *Restraining Orders Act* imposing restraints of the kind referred to in section 13 of the *Restraining Orders Act*.³³⁶

Section 13 provides for the restraints that may be imposed by a VRO:

13. Restraints on respondent

- (1) In making a violence restraining order a court may impose such restraints on the lawful activities and behaviour of the respondent as the court considers appropriate to prevent the respondent —
 - (a) committing an act of abuse against the person seeking to be protected;
 - (aa) if the person seeking to be protected by the order is a child, exposing a child to an act of abuse committed by the respondent; or
 - (b) behaving in a manner that could reasonably be expected to cause fear that the respondent will commit such an act.

- (2) Without limiting the restraints that may be imposed, a court may restrain the respondent from doing all or any of the following —
 - (a) being on or near premises where the person seeking to be protected lives or works;
 - (b) being on or near specified premises or in a specified locality or place;
 - (c) approaching within a specified distance of the person seeking to be protected;
 - (d) communicating, or attempting to communicate, (by whatever means) with the person seeking to be protected;
 - (e) preventing the person seeking to be protected from obtaining and using personal property reasonably needed by the person seeking to be protected, even if

³³⁵ Other legislation in Western Australia that explicitly deals with family and domestic violence includes the *Criminal Code*, *Bail Act 1981*, *Criminal Investigation Act 2006* and the *Family Court Act 1997*. Other legislation relevant to family and domestic violence includes the *Sentencing Act 1995*, *Sentencing Administration Act 2003*, *Evidence Act 1906*, *Magistrates Court Act 2004*, *Criminal Procedure Act 2004*, *Criminal Injuries Compensation Act 2003*, *Victims of Crime Act 1994* and *Children and Community Services Act 2004*.

³³⁶ *Restraining Orders Act 1997* (WA), Section 3.

- the respondent is the owner of, or has a right to be in possession of, the property;
- (f) causing or allowing another person to engage in conduct of a type referred to in paragraphs (a) to (e).

Sections 11A and 7A of the *Restraining Orders Act* provide when restraining orders may be made, and who may make them:

11A. When violence restraining orders may be made

A court may make a violence restraining order if it is satisfied that —

- (a) the respondent has committed an act of abuse against a person seeking to be protected and the respondent is likely again to commit such an act against that person; or
- (b) a person seeking to be protected, or a person who has applied for the order on behalf of that person, reasonably fears that the respondent will commit an act of abuse against the person seeking to be protected,

and that making a violence restraining order is appropriate in the circumstances.

7A. Orders under this Act imposing restraints

An order imposing restraints may be made under this Act by —

- (a) the Magistrates Court hearing an application under section 25, 38 or 45;
- (b) the Children’s Court hearing an application under section 25, 38 or 45;
- (c) an authorised magistrate hearing a telephone application;
- (d) a court acting under section 63 or 63A; or
- (e) a police officer acting under Part 2 Division 3A.

The *Restraining Orders Act* also provides for:

- persons authorised to apply for a VRO and the process for doing so, by telephone (sections 17 to 24), or in person to a court (sections 25 to 30);
- procedures when an interim order is made and for hearings and final hearings of applications for a VRO (sections 40 to 44C);
- procedures for the variation or cancellation of VROs (sections 45 to 49A); and
- penalties for breach of a VRO (section 61) and repeated breaches of a VRO (section 61A).

Additionally, sections 4 and 6 of the *Restraining Orders Act* define the terms ‘family and domestic relationship’ and an ‘act of family and domestic violence’, as follows:³³⁷

³³⁷ These definitions are also discussed in section 3.1.

4. Term used: family and domestic relationship

- (1) In this Act –
family and domestic relationship means a relationship between 2 persons –
- (a) who are, or were, married to each other; or
 - (b) who are, or were, in a de facto relationship with each other; or
 - (c) who are, or were, related to each other; or
 - (d) one of whom is a child who –
 - (i) ordinarily resides, or resided, with the other person; or
 - (ii) regularly resides or stays, or resided or stayed, with the other person;
- or
- (e) one of whom is, or was, a child of whom the other person is a guardian; or
 - (f) who have, or had, an intimate personal relationship, or other personal relationship, with each other.
- (2) In subsection (1) –
other personal relationship means a personal relationship of a domestic nature in which the lives of the persons are, or were, interrelated and the actions of one person affects, or affected the other person;
related, in relation to a person, means a person who –
- (a) is related to that person taking into consideration the cultural, social or religious backgrounds of the 2 persons; or
 - (b) is related to the person's –
 - (i) spouse or former spouse; or
 - (ii) de facto partner or former de facto partner.

6. Terms used: act of family and domestic violence and act of personal violence

- (1) In this Act –
act of family and domestic violence means one of the following acts that a person commits against another person with whom he or she is in a family and domestic relationship –
- (a) assaulting or causing personal injury to the person;
 - (b) kidnapping or depriving the person of his or her liberty;
 - (c) damaging the person's property, including the injury or death of an animal that is the person's property;
 - (d) behaving in an ongoing manner that is intimidating, offensive or emotionally abusive towards the person;
 - (e) pursuing the person or a third person, or causing the person or a third person to be pursued –
 - (i) with intent to intimidate the person; or
 - (ii) in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, the person;
 - (f) threatening to commit any act described in paragraphs (a) to (c) against the person.

The *Restraining Orders Act* also imposes obligations on state government departments and authorities to take particular action in cases of suspected family and domestic violence. These obligations affect WAPOL and DCPFS, and are discussed further in following chapters.

7.1.1 Violence restraining orders are a civil remedy for family and domestic violence

VROs ‘offer a civil law response to family and domestic violence.’³³⁸ VROs allow victims of family and domestic violence to apply for an order that ‘can impose conditions that restrict behaviour that would not otherwise be prohibited by criminal law.’³³⁹

Section 61(1) of the *Restraining Orders Act* provides that a breach of a VRO is a criminal offence and ‘it may be easier to prove a breach than the underlying offence to the requisite degree of proof.’³⁴⁰ VROs may therefore offer victims of family and domestic violence an avenue to the criminal justice process.

The key differences between VROs as a civil response to family and domestic violence and criminal proceedings are shown in Figure 20 below.

Figure 20: Comparison between VROs and criminal proceedings

	Violence restraining order – a civil response	Criminal proceedings
Purpose	To protect victim from future violence	To punish offender for past criminal conduct. Other sentencing purposes include: deterrence, rehabilitation, incapacitation, denunciation and restoration
Standard of proof	The balance of probabilities	Beyond reasonable doubt
Who initiates	Victim, authorised person, police, courts	Police/State Department of Public Prosecutions lay charges and/or prosecute
Outcome	Conditions placed on a person against whom the order is made (e.g. not to harass, not to approach victim)	On finding of guilt or conviction, offender is sentenced

Source: Adapted from Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Canberra, 2010, 8.31. p. 352.

³³⁸ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, the Law Reform Commission, Perth, 2013, p. v.

³³⁹ Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Canberra, 2010, p. 461, 11.124.

³⁴⁰ Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Canberra, 2010, p. 470, 11.158.

7.2 Key principles for the administration of the *Restraining Orders Act*

7.2.1 The Response-based Practice Model for understanding and addressing family and domestic violence

In order to prevent and reduce family and domestic violence, and ultimately family and domestic violence fatalities, researchers, practitioners and policy makers have sought to understand the behaviour of perpetrators of the violence, and how these behaviours can be influenced. The research literature in this area has traditionally focused on the behaviour of victims and perpetrators within their relationship, with a particular emphasis on strategies that the victim can or should employ to stop the violence.

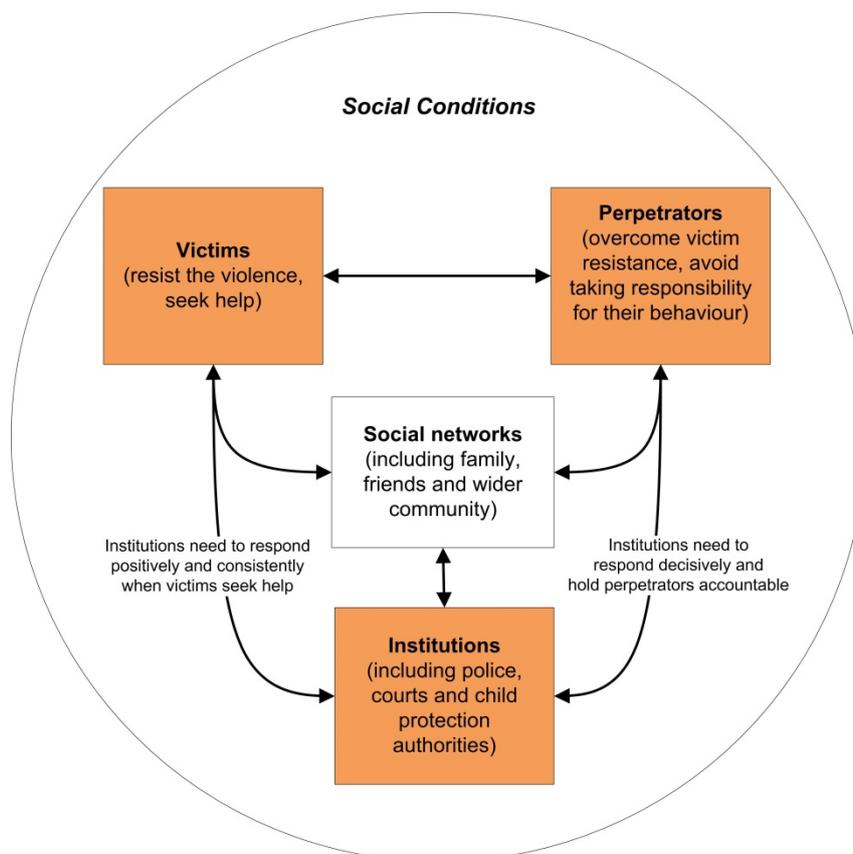
More recently, a model for understanding victim and perpetrator behaviour has emerged from the research literature and contemporary practice. This model, known as the Response-based Practice Model (**the Response-based Practice Model**) recognises that perpetrators' decisions to commit acts of family and domestic violence, and victims' responses to these acts of violence, are not done in isolation of their social conditions or of other parties.

With regard to other parties, perpetrators' decisions and victims' responses are connected to responses they anticipate and responses they receive from their familial and social networks, including family, friends and neighbours (referred to as the 'social network response'). They are also connected to responses they anticipate and responses they receive from institutions including police, courts, the judiciary, child protection authorities, refuges, the media, doctors, nurses and counsellors (referred to as the 'institutional response').

The Response-based Practice Model applied by the Office in this investigation is depicted in Figure 21 below.³⁴¹

³⁴¹ Section 7.2.1 text adapted from: Wade, A, *Tell it Like it Is: Developing Effective Social Responses to Violence*, Centre for Response-Based Practice, Duncan B.C. Canada, PowerPoint presentation delivered in Lulea, Sweden, 17 January 2012, by Ombudsman Western Australia, in discussion with people engaged by the Office with expertise in the area of family and domestic violence. See also: Brewin, C. R., Andrews, B, Rose, S, 'Gender, Social Support, and PTSD in Victims of Violent Crime', *Journal of Traumatic Stress*, vol. 16, no. 4, 2003, pp. 421-427; Brewin, C, Reynolds, M, 'Intrusive cognitions, coping strategies and emotional responses in depression, post-traumatic stress disorder and a non-clinical population', *Journal of Behaviour Research and Therapy*, vol. 36, no. 2, Feb 1998, pp. 135-147; Kessler, R, C, Price, R, H, Wortman, C, B, 'Social factors in psychopathology: stress, social support, and coping processes', *Annual Review of Psychology*, vol. 36, 1985, pp. 531-572.

Figure 21: The Response-based Practice Model as used in this investigation



Source: Adapted by Ombudsman Western Australia, from: Wade, A, *Tell it Like it Is: Developing Effective Social Responses to Violence*, Centre for Response-Based Practice. Duncan B.C. Canada, PowerPoint presentation delivered in Lulea, Sweden, 17 January 2012.

7.2.2 When victims seek help, positive and consistent institutional responses can prevent and reduce further violence

As discussed in Chapter 3, a victim of family and domestic violence may have experienced a large number of incidents and overcome significant barriers prior to seeking help formally from government agencies or specialist services. The Response-based Practice Model highlights that the actual and anticipated institutional response directly influences the likelihood that a victim will seek help to establish and maintain safety in the first instance, continue to seek help, and implement safety measures suggested by institutions, including enhancing the victim's own safety strategies.³⁴²

³⁴² Adapted from: Wade, A, *Tell it Like it Is: Developing Effective Social Responses to Violence*, Centre for Response-Based Practice Duncan B.C. Canada, PowerPoint presentation delivered in Lulea, Sweden, 17 January 2012, by Ombudsman Western Australia, in discussion with people engaged by the Office with expertise in the area of family and domestic violence.

Conversely, victims who receive negative responses to disclosures of violence experience 'more intense and prolonged distress'³⁴³ and 'are less likely to report violence a second time.'³⁴⁴

The research literature also suggests that providing victims who seek help with appropriate 'information, support, advocacy and referral to other community supports can be crucial to women pursuing, rather than abandoning, efforts to access legal protection and can link them into the broader range of services that make up the coordinated response to domestic violence.'³⁴⁵ A 2013 University of Sydney study of women's experiences of VROs found that 'women are unlikely to be able to make constructive use of the law without the provision of support, advocacy and information ... contact with the legal system, often for the first time, can be overwhelming and frightening.'³⁴⁶ In Western Australia, the Auditor General has also found that victims who receive such support services are more likely to be successful in being issued with an interim VRO.³⁴⁷

7.2.3 Victims' decisions about how they will resist violence and protect themselves may not always align with the expectations of institutions; this does not mean that victims do not need, want, or are less deserving of, help

The research literature suggests that decisions made by victims about the strategies they will use to protect themselves may not always align with the way that institutions expect victims to behave.³⁴⁸ For example, the research literature identifies:

Protective strategies that frequently are recommended by family, friends, and social services providers include contacting the police, obtaining a restraining order, or seeking refuge at a friend or relative's home or at a domestic violence shelter. It is ordinarily assumed that these suggestions are successful at keeping victims and their children safe from violence. It is crucial to remember, however, that while these strategies can be effective for some victims of domestic violence, they can be unrealistic and even dangerous options for other victims. For example, obtaining a restraining order can be useful in deterring some perpetrators, but it can cause other perpetrators to become increasingly abusive and threatening. Since these recommendations are

³⁴³ Andrews, B, Brewin, C, R and Rose, S, "Gender, social support, and PTSD in victims of violent crimes", *Journal of Traumatic Stress*, vol. 16, no. 4, 2003, pp. 421-427.

³⁴⁴ The Australian Psychological Society Ltd, *Public Consultation: Family Violence Bill - Submission prepared for the Australian Government's Family Law Amendment (Family Violence Bill 2010) – Exposure Draft*, Melbourne, 2011, p. 7.

³⁴⁵ Laing, L, 'It's like this maze that you have to make your way through'. *Women's Experiences of Seeking a Domestic Violence Protection Order in New South Wales*, University of Sydney, Faculty of Education and Social Work, New South Wales, 2013, p. 12.

³⁴⁶ Laing, L, 'It's like this maze that you have to make your way through'. *Women's Experiences of Seeking a Domestic Violence Protection Order in New South Wales*, University of Sydney, Faculty of Education and Social Work, New South Wales, 2013, p. 12.

³⁴⁷ Auditor General for Western Australia, *A Measure of Protection: Management and Effectiveness of Restraining Orders*, Auditor General for Western Australia, Perth, October 2002, p. 40.

³⁴⁸ For example, Lien Bragg, H, *Child Protection in Families Experiencing Domestic Violence*, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, Office on Child Abuse and Neglect, Washington, D.C., 2003, p. 28; Long, J, *Explaining Counterintuitive Victim Behaviour in Domestic Violence and Sexual Assault Cases*, American Prosecutors Research Institute's National Center for the Prosecution of Violence Against Women, Virginia, 2006.

concrete and observable, they tend to reassure people that the victim of domestic violence is actively taking steps to address the abuse and to be safe, even if they create additional risks. Furthermore, these options only address the physical violence in a victim's life. They do not address the economic or housing challenges the victim must overcome to survive, nor do they provide the emotional and psychological safety the victims need. Therefore, victims often weigh "perpetrator-generated" risks versus "life-generated" risks as they try to make decisions and find safety.³⁴⁹

A further issue raised by stakeholders is the perceived negative responses provided to victims who seek help from institutions and subsequently return to the relationship - a decision which does not align with the expectations of these institutions. This is despite the fact that the research literature identifies that victims of family and domestic violence typically undergo several shifts in their thinking prior to leaving their relationship permanently.³⁵⁰ On this point the research literature further identifies:

Many survivors go through several phases in the process of leaving. They may leave and return multiple times, each time learning new coping skills. As with divorcing women, these phases may involve cognitive and emotional "leaving" before the physical leaving.³⁵¹

During the investigation, stakeholders observed that:

Women returning to the relationship then have to contend with poor and adverse professional understandings of the leaving, returning, staying cycle and can be penalised, judged, shamed and subsequently isolated from formal and informal supports ... The average return rate is between 5 and 9 times. This is an issue that is under addressed and misunderstood as the service system is designed to support women leaving abuse rather than supporting women's decisions to return and stay in their relationships.³⁵²

The research literature similarly suggests that 'services for victims of domestic violence would be enhanced by a greater understanding of the change process by which [victims] come to leave or return to an abusive [partner].'³⁵³

³⁴⁹ Lien Bragg, H, *Child Protection in Families Experiencing Domestic Violence*, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, Office on Child Abuse and Neglect, Washington, D.C, 2003, p. 28.

³⁵⁰ Anderson, D, K and Saunders, D, G, 'Leaving an abusive partner: An empirical review of predictors, the process of leaving and psychological well-being', *Trauma, Violence & Abuse*, vol. 4, no. 2, April 2003, pp. 164.

³⁵¹ Anderson, D, K and Saunders, D, G, 'Leaving an abusive partner: An empirical review of predictors, the process of leaving and psychological well-being', *Trauma, Violence & Abuse*, vol. 4, no. 2, April 2003, pp. 164.

³⁵² AnglicareWA, personal communication, 30 March 2015.

³⁵³ Martin, A, J, Berenson, K, R, Griffing, A, S, Sage, R, E, Madry, L, Bingham, L, E and Primm, B, J, 'The process of leaving an abusive relationship: The role of risk assessments and decision-certainty', *Journal of Family Violence*, vol.15, 2000, p. 110.

7.2.4 By responding decisively and holding perpetrators accountable for their behaviour, institutions can prevent and reduce further violence

The discussion in Chapter 3 identified that perpetrators of family and domestic violence have a tendency to deny, rationalise or minimise responsibility for their violent behaviour, to avoid accountability.³⁵⁴

As identified in the Response-based Practice Model, a key factor influencing perpetrators is the response of both social networks and institutions to their actions, including the extent to which they are held accountable for their violence. The research literature has found that 'cultural and social norms are highly influential in shaping individual behaviour, including the use of violence.'³⁵⁵ Given this, 'one of the most effective ways to stop domestic violence is to make clear to abusers and potential abusers that society will not tolerate it.'³⁵⁶

To this end, 'the police response is not only vital for the immediate safety of the victim but also conveys an important social message about the way in which violence against women and children is regarded by society.'³⁵⁷ In addition, the criminalisation of family and domestic violence:

[S]eeks to introduce the standards and norms of non-violence in public places, and the means of enforcing and regulating these, into people's more intimate lives. Criminalisation attempts to insert the power and authority of 'the state' between a person prepared to use physical force and/or the threat of it, and the persons over whom such dominion and control is sought.³⁵⁸

The research literature further finds that 'criminal justice interventions are one of the few mechanisms available to victims for actually stopping the violence.'³⁵⁹ Research into 'the general and specific deterrent effects of police actions independent of substantive punishments'³⁶⁰ has identified that, for example, arresting perpetrators of domestic

³⁵⁴ Coates, L and Wade, A, "Telling it like it isn't: obscuring perpetrator responsibility for violent behaviour," *Discourse and Society*, Sage Publications, London, 2004, p. 7.

³⁵⁵ World Health Organization, *Changing Cultural and Social Norms that Support Violence*, WHO, Geneva, 2009, p. 3.

³⁵⁶ Clark, M, *Crime Begins at Home: Let's Stop Punishing Victims and Perpetuating Violence*, William and Mary Law Review, vol. 28, 1987, p. 279; Holder, R, *Issues Paper 3: Domestic and Family Violence: Criminal Justice Interventions*, Australian Domestic and Family Violence Clearinghouse, The University of New South Wales, 2001, p. 2.

³⁵⁷ Mitchell, L, 'Domestic Violence in Australia – an overview of the issues,' *Parliament of Australia*, Canberra, 22 November 2011, viewed 27 May 2014, p. 18, <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/DVAustralia>; Crowe, A, *Community Corrections' Response to Domestic Violence: Guidelines for Practice*, American Probation and Parole Association, Lexington, 2009, p. 37.

³⁵⁸ Holder, R, *Issues Paper 3: Domestic and Family Violence: Criminal Justice Interventions*, Australian Domestic and Family Violence Clearinghouse, The University of New South Wales, 2001, p. 1.

³⁵⁹ Holder, R, *Issues Paper 3: Domestic and Family Violence: Criminal Justice Interventions*, Australian Domestic and Family Violence Clearinghouse, the University of New South Wales, 2001, p. 2.

³⁶⁰ Travis, J and Visher, C, *The Criminalization of Domestic Violence: Promises and Limits*, U.S. Department of Justice, Washington, 1996, p. 11.

violence ‘was consistently related to reduced subsequent aggression’³⁶¹ against their partners.

A recent inspection of the police response to domestic violence in the United Kingdom noted:

Domestic abuse crimes need to be addressed and investigated as seriously as other victim-based and violent crimes. Where there is sufficient evidence to provide a realistic prospect of conviction, and it is in the public interest, these alleged perpetrators should be charged and brought to justice through the criminal justice system.³⁶²

Engaging with perpetrators to promote accountability and prevent further violence

In addition to appropriate criminal justice responses as discussed above, a further way that institutions may seek to hold perpetrators accountable, and prevent family and domestic violence, is through engaging with perpetrators to change their behaviour, that is:

Educating perpetrators about the consequences of their actions, challenging them to accept responsibility, and assisting them to seek help in changing their behaviour, are seen as vitally important strategies to avert further offending.³⁶³

Currently in Western Australia, ‘services that actively engage abusive men ... are mainly those associated with men’s behaviour change programs and judicial and criminal responses at the high risk end of the continuum.’³⁶⁴

The research literature observes that the effectiveness of ‘intervention programs has been the subject of much controversy, and the research evidence in this area is inconclusive’.³⁶⁵ The Law Reform Commission Final Report also noted the lack of evidence in this area³⁶⁶ and has accordingly recommended that ‘the Department of the Attorney General, the Department of Corrective Services and the Department for Child Protection and Family Support undertake a review of the availability and effectiveness of programs for perpetrators of family and domestic violence across Western Australia’.³⁶⁷ The Law Reform Commission has further recommended that this review include:

³⁶¹ Maxwell, C, Garner, J, and Fagan, J, *The Effects of Arrest on Intimate Partner Violence: New Evidence From the Spouse Assault Replication Program*, U.S. Department of Justice, Washington, 2001, p. 2.

³⁶² Her Majesty’s Inspectorate of Constabulary, *Everyone’s business: Improving the police response to domestic violence*, HMIC, London, 2014, p. 98.

³⁶³ Australian Attorney-General’s Department, *AVERT Family Violence: Collaborative Responses in the Family Law System, Prevention Strategies: Involving and Engaging Perpetrators*, Commonwealth of Australia, Canberra, 2010, p. 7.

³⁶⁴ AnglicareWA, *Acting to Interrupt Violence and Abuse Program (AIVA)*, Anglicare Western Australia, Perth, 2014, p. 5.

³⁶⁵ Australian Attorney-General’s Department, *AVERT Family Violence: Collaborative Responses in the Family Law System, Prevention Strategies: Involving and Engaging Perpetrators*, Commonwealth of Australia, Canberra, 2010, p. 9.

³⁶⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws*, Final Report, Law Reform Commission of Western Australia, Perth, 2014, p. 141.

³⁶⁷ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws*, Final Report, Law Reform Commission of Western Australia, Perth, 2014, p. 141.

- (a) consideration of the availability and effectiveness of such programs for Aboriginal perpetrators, perpetrators with disability, perpetrators from culturally and linguistically diverse communities, perpetrators in remote areas and perpetrators who are children;
- (b) consideration of the effectiveness of programs delivered as part of the metropolitan Family Violence Courts and the Barndimalgu Aboriginal Family Violence Court; and
- (c) consideration of the availability and effectiveness of such programs delivered in prisons and detention centres and as part of a community-based sentencing disposition.³⁶⁸

Recently, AnglicareWA has developed a model known as Acting to Interrupt Violence and Abuse (**AIVA**). The AIVA model seeks to act as an 'interrupter in the management of men who choose abuse [and] who enter the service system at multiple points of entry earlier'.³⁶⁹

7.2.5 Perpetrators may seek to manipulate institutions, in order to maintain power and control over their victims and to avoid being held accountable; institutions need to be alert to this

The research literature also identifies that perpetrators 'often try to manipulate the "system"'.³⁷⁰ For example, perpetrators may seek to manipulate state government departments and authorities, and maintain control over the victim, by:

- Threatening to call Child Protective Services ... and making actual reports that his partner neglects or abuses the children.
- Changing lawyers and delaying court hearings to increase his partner's financial hardship.
- Telling police she hit him, too.
- Giving false information about the criminal justice system to confuse his partner or prevent her from acting on her own behalf.³⁷¹

The research literature further suggests that perpetrators 'often appear charming and attentive to outsiders'³⁷² and also use their 'cunning' to 'prevent the ... system from reaching the goal of maximum accountability'.³⁷³ DCPFS has specifically identified the risk

³⁶⁸ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws*, Final Report, Law Reform Commission of Western Australia, Perth, 2014, p. 141.

³⁶⁹ AnglicareWA, *Acting to Interrupt Violence and Abuse Program (AIVA)*, Anglicare Western Australia, Perth, 2014, p. 5.

³⁷⁰ Alabama Coalition Against Domestic Violence, *Why do Abusers Batter?*, Alabama Coalition Against Domestic Violence, viewed 14 April 2015, <<http://www.acadv.org/abusers.html>>.

³⁷¹ Alabama Coalition Against Domestic Violence, *Why do Abusers Batter?*, Alabama Coalition Against Domestic Violence, viewed 14 April 2015, <<http://www.acadv.org/abusers.html>>.

³⁷² Alabama Coalition Against Domestic Violence, *Why do Abusers Batter?*, Alabama Coalition Against Domestic Violence, viewed 14 April 2015, <<http://www.acadv.org/abusers.html>>.

³⁷³ Alabama Coalition Against Domestic Violence, *Achieving Accountability in Domestic Violence Cases: A Practical Guide for Reducing Domestic Violence*, Illinois Coalition Against Domestic Violence, Springfield, 2005, p. 4.

of ‘collusive practice’³⁷⁴ in its resource materials for officers engaging with perpetrators, observing that:

Men who perpetrate violence can be persuasive and subtle in the ways they downplay, deny, justify and rationalise their behaviour.³⁷⁵

DCPFS provides the following advice to its officers:

When you are trying to engage a perpetrator of family and domestic violence, it is very likely that he will try to get you to collude with his narrative about the violence, perhaps by:

- presenting as calm, collected and reasonable;
- presenting his (ex)partner as irrational, unreasonable or mentally ill;
- lying about or omitting known facts, or presenting a partial picture;
- claiming his partner is lying or fabricating evidence;
- claiming ‘the system’ is out to get him;
- speaking on behalf of his (ex)partner—especially if he is her carer;
- claiming the violence is mutual;
- acknowledging some wrongs while not accepting responsibility; or
- attempting to use humour or other forms of charm to win you over.

If you collude, you might reinforce the perpetrator’s violence-supporting narratives, at considerable cost to his family members.³⁷⁶

It is important that all state government departments and authorities who engage with perpetrators are aware of the risk of being manipulated. This is critical to preventing family and domestic violence as ‘[w]hen perpetrators are allowed to manipulate the system to avoid consequences, accountability is diminished ... [w]hen perpetrators come to see that insignificant or no consequences are likely, their ... behaviour is likely to continue.’³⁷⁷

7.2.6 By administering the *Restraining Orders Act* in accordance with nine key principles, state government departments and authorities will have the greatest impact on preventing and reducing family and domestic violence and related fatalities

To be effective, the administration of the *Restraining Orders Act* by state government departments and authorities will need to reflect the key concepts, or principles, identified in the research literature. These principles need to be reflected both when agencies are working separately and collaboratively. These nine principles are:

³⁷⁴ Government of Western Australia, Department for Child Protection and Family Support, *Perpetrator Accountability in Child Protection Practice*, DCPFS, Perth, 2013.

³⁷⁵ Government of Western Australia, Department for Child Protection and Family Support, *Perpetrator Accountability in Child Protection Practice*, DCPFS, Perth, 2013, p. 47.

³⁷⁶ Government of Western Australia, Department for Child Protection and Family Support, *Perpetrator Accountability in Child Protection Practice*, DCPFS, Perth, 2013, p. 48.

³⁷⁷ Alabama Coalition Against Domestic Violence, *Achieving Accountability in Domestic Violence Cases: A Practical Guide for Reducing Domestic Violence*, Illinois Coalition Against Domestic Violence, Springfield, 2005, p. 4.

- (i) perpetrators use family and domestic violence to exercise power and control over victims (as discussed in section 3.5);
- (ii) victims of family and domestic violence will resist the violence and try to protect themselves (as discussed in section 3.2);
- (iii) victims may seek help to resist the violence and protect themselves, including help from state government departments and authorities (as discussed in section 3.3);
- (iv) when victims seek help, positive and consistent responses by state government departments and authorities can prevent and reduce further violence (as discussed in section 7.2.2);
- (v) victims' decisions about how they will resist violence and protect themselves may not always align with the expectations of state government departments and authorities; this does not mean that victims do not need, want, or are less deserving of, help (as discussed in section 7.2.3);
- (vi) perpetrators of family and domestic violence make a decision to behave violently towards their victims (as discussed in section 3.4);
- (vii) perpetrators avoid taking responsibility for their behaviour and being held accountable for this behaviour by others (as discussed in section 3.6);
- (viii) by responding decisively and holding perpetrators accountable for their behaviour, state government departments and authorities can prevent and reduce further violence (as discussed in section 7.2.4); and
- (ix) perpetrators may seek to manipulate state government departments and authorities, in order to maintain power and control over their victims and avoid being held accountable; state government departments and authorities need to be alert to this (as discussed in section 7.2.5).

For the purposes of the investigation, the Office has mapped the key steps in the administration of the *Restraining Orders Act* by state government departments and authorities. These are shown in Figure 22 below. Figure 22 depicts the use of VROs as a broadly linear process. However, the Office recognises this will not always be the experience of victims. For example, an act of family and domestic violence can occur while the system is responding to prior incidents. It is also important to recognise that all of the state government departments and authorities examined in this report have opportunities to provide an integrated response to family and domestic violence at each of these key steps, and it is not solely the responsibility of any one agency.

Figure 22: Key steps in the use of violence restraining orders examined in this report (and relevant Chapter of report)

